IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 8 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF WEALTH TAX

Versus

FATEFUL NOTICE TRUST

Appearance:
Mr.B.B.Naik for MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 04/03/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

The Income-tax Appellate Tribunal, Ahmedabad has referred the following question for the opinion of this Court under section 27(1) of the Wealth Tax Act, 1957.

"Whether the Appellate Tribunal is right in law and on facts in holding that as the net wealth of the assessee was below the exemption limit the W.T.O. was not justified in applying the provisions of section 21(4) of the W.T.Act and taxing the trust at higher of the two rates prescribed under section 21(4) of the W.T. Act?"

2. Similar question had come up for consideration by this Court in Wealth Tax Reference No. 47 of 1993 and by the decision dated 29.1.1998, it was held that though a representative assessee who holds the assets on behalf of the beneficiaries, whose shares are indeterminate or unknown, is required to be assessed as an individual, the provisions of section 21(4) of the Wealth Tax Act made it clear that, that should be done in the same manner and to the same extent as the levy and recovery could be made from an individual. It was held that if an individual was not liable to pay wealth tax and the wealth tax was not recoverable from him, then to that extent, it could also not be recovered from such representative assessee who was required to be assessed as an individual. It was further held that it would be fallacious to say that the Legislature intended to take away the exemption limit which was applicable in such cases merely because higher rate came to be prescribed by the subsequent amendments. For this and other reasons, given for the said decision in Wealth Tax Reference No.47 of 1993, we answer the question referred to this Court in the affirmative in favour of the assessee and against the Revenue. The Reference stands disposed of accordingly with no order as to costs.

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